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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,239	08/24/2001	Blair D. Walker	001/017 (1-3) USA	3291

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EXAMINER	
DESANTO, MATTHEW F	
ART UNIT	**PAPER NUMBER**
3763	

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/939,239	WALKER ET AL.	
	Examiner	Art Unit	
	Matthew F DeSanto	3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 November 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *5-8 and 22-34* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *5-8 and 22-34* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☒ Other: *MEMORANDUM*.

DETAILED ACTION

Response to Arguments

1. In view of the appeal brief filed on November 8, 2004, PROSECUTION IS HEREBY REOPENED. A rebuttal to the Reply Brief is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 5-8, are rejected under 35 U.S.C. 102(b) as being anticipated by Williams et al. (USPN 4,941,475).

Williams et al. discloses a venous line catheter with at least one elongate structure for establishing central venous access, wherein the catheter has a distal and proximal end and a lumen in communication with the exterior of the elongated structure at said proximal and distal portions, and at least one heat exchange element and a pump (Figures 1, 3, 7 and entire reference).

Williams et al. further discloses wherein the heat exchange element is made of urethane, nylon, PE or PET, and the heat exchange is a balloon (Figures 1, 3, 7 and entire reference).

4. Claims 5-8, are rejected under 35 U.S.C. 102(e) as being anticipated by Bresnaham et al. (USPN 6,117,105).

Bresnaham et al. discloses a venous line catheter with at least one elongate structure for establishing central venous access, wherein the catheter has a distal and proximal end and a lumen in communication with the exterior of the elongated structure at said proximal and distal portions, and at least one heat exchange element and a pump (Figures 14, 30 and entire reference).

Bresnaham further discloses wherein the heat exchange element is made of urethane, nylon, PE or PET, and the heat exchange is a plurality of balloons (Figures 14, 30 and entire reference).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. Claims 5-8, 22-27, 31-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams et al. as applied to the claims above, and further in view of Loubser (USPN 6,110,139).

Williams et al. teaches the claimed invention but fails to disclose the specific range in which the pump is used.

Loubser discloses a perfusion pump that has a flow rate of about 240 milliliters per minute (Column 12, lines 1-26).

At the time of the invention it would have been obvious to use the pump of Williams et al. at the specific range that is taught by Loubser because Williams et al. has the same type of pump, and it is well known in the medical art as shown by Loubser to use a perfusion pump with a flow rate at 240 milliliters per minute to allow medicament or other liquids to be entered into the human body at the specific range. The examiner would also like to note that since Williams et al. discloses the same type of pump, the examiner determined that the pump of Williams would be capable of having a flow rate about 240 milliliters, since the Loubser reference disclosed the same pump, and how this pump has a flow rate within the range that is being claimed. Therefore, the examiner determines that the pump of Williams et al. is capable of pumping fluid at the rate that is being claimed in this invention when Williams et al. is considered in view of Loubser.

7. Claims 5-8, 22-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bresnaham et al. as applied to the claims above, and further in view of Loubser (USPN 6,110,139).

Bresnaham et al. teaches the claimed invention but fails to disclose the specific range in which the pump is used.

Loubser discloses a perfusion pump that has a flow rate of about 240 milliliters per minute (Column 12, lines 1-26).

At the time of the invention it would have been obvious to use the pump of Bresnaham et al. at the specific range that is taught by Loubser because Bresnaham et al has the same type of pump, and it is well known in the medical art as shown by Loubser to use a perfusion pump with a flow rate at 240 milliliters per minute to allow medicament or other liquids to be entered into the human body at the specific range. The examiner would also like to note that since Bresnaham et al. discloses the same type of pump, the examiner determined that the pump of Bresnaham would be capable of having a flow rate about 240 milliliters, since the Loubser reference disclosed the same pump, and how this pump has a flow rate within the range that is being claimed. Therefore, the examiner determines that the pump of Bresnaham et al. is capable of pumping fluid at the rate that is being claimed in this invention when Bresnaham et al. is considered in view of Loubser.

Response to Arguments

8. Applicant's arguments filed 11/8/04 have been fully considered but they are not persuasive. The examiner-reopened prosecution to further clarify the issues before the case goes to the board of appeals.

9. With regards to the Bresnaham et al. reference, the examiner has included an attachment to this office action, that describes the policy in which the Patent and Trademark Office deal with supplying provisional application that are relied on for an earlier filing date. According to the memorandum that examiner does not have to supply the copy of the provisional application because the applicant can request a copy on the PAIR system.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew F DeSanto whose telephone number is 571-272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Matthew DeSanto
Art Unit 3763
January 24, 2005

NICHOLAS D. LUCCHESI
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TECHNOLOGY CENTER 3700